

APPEAL NO. 040027
FILED FEBRUARY 23, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 2, 2003. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable repetitive trauma injury including a compensable low back injury on _____; and (2) the claimant did not have disability. The claimant has appealed these determinations on sufficiency of the evidence grounds. The respondent (carrier) has responded and asserts that the appeal is untimely and requests that the appeal be dismissed. Alternatively, the carrier urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

We first address the carrier's assertion that the claimant's appeal is untimely. A written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision, excluding Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code. Section 410.202(a) and (d). Texas Workers' Compensation Commission (Commission) records indicate that the hearing officer's decision was mailed to the claimant on December 5, 2003. The claimant was deemed to have received the decision on December 10, 2003, pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)). The last date for the claimant to timely file an appeal was January 6, 2004. A copy of the claimant's appeal was faxed to the Commission on January 5, 2004, and was stamped as received by the Commission's Chief Clerk of Proceedings on that date. The appeal is, therefore, timely.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Because the claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have disability. Section 401.011(16).

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **HARTFORD UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge